

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION FOR ADJUSTMENT OF ELECTRIC)	
RATES OF KENTUCKY POWER COMPANY)	CASE NO. 91-066

O R D E R

On April 18, 1991, the Attorney General, Utility and Rate Intervention Division ("AG"), filed a motion requesting the Commission to modify or amend its April 1, 1991 Order. In that Order, the Commission: 1) found that further proceedings were necessary to determine the reasonableness of Kentucky Power Company's ("Kentucky Power") proposed electric rates; 2) allowed to go into effect, subject to refund with interest, the proposed reduced rates; and 3) suspended for five months through September 25, 1991 all other proposed rates and tariffs.

The AG's motion claims that Kentucky Power's proposed revenue allocation, whereby the rates for some customer classes are reduced, while the rates for the remaining classes are either increased or unchanged, constitutes rate discrimination. The AG argues that the Commission acted arbitrarily in approving Kentucky Power's proposed rates without affording the adversely affected customer classes an opportunity to challenge Kentucky Power's revenue allocation. The AG also argues that in allowing the reduced rates to become effective, the Commission did so without any evidence to support Kentucky Power's allocation of the rate

reduction. The AG further argues that there is no evidence to support the Commission's decision to allow the proposed increased rates to become effective on April 26, 1991. The AG states that it agrees with the intent of the April 1, 1991 Order to allow Kentucky Power's customers to immediately enjoy the benefits of the proposed rate reduction, but argues that neither Kentucky Power nor the Commission has the authority under KRS 278.180(2) to allocate the proposed rate reduction in an arbitrary manner to selected customer classes. The AG concludes by requesting the Commission to reallocate Kentucky Power's proposed rate reduction on a proportional basis to each existing rate.

On April 26, 1991, Kentucky Power filed a response in opposition to the AG's motion. Kentucky Power states that the AG is in error in claiming that the Commission allowed the proposed increased rates to become effective on April 26, 1991 since the increased rates were suspended for the maximum period of five months. Kentucky Power further states that those customer classes whose rates were not proposed to be changed suffer no prejudice by the Commission's April 1, 1991 Order because Kentucky Power's evidence tends to show that the rates for those classes should be increased rather than remain unchanged. Consequently, in Kentucky Power's opinion, the April 1, 1991 Order merely maintains the status quo for those customer classes and they are fully protected by the refund provision of that Order should the Commission ultimately reallocate the proposed rate decrease. Kentucky Power notes that while the residential class has not been allocated any of the rate decrease, that class has traditionally been subsidized

by other customer classes, and the rate of return earned on the residential class is significantly less than the proposed overall rate of return. Finally, Kentucky Power states that the relief requested by the AG would result in one refund now and possibly a second refund when the Commission rules on the merits of Kentucky Power's application, creating an unnecessary administrative burden and cost.

On April 30, 1991, Intervenors Nola Scaggs, et al. ("Low Income Customers") filed a response in support of the AG's motion. The response basically echoes the AG's arguments but acknowledges that the April 1, 1991 Order did suspend the proposed increased rates for the maximum statutory period. The Low Income Customers have also cited certain evidence from Kentucky Power's last rate case, filed almost seven years ago, in an attempt to discredit the proposed rate reduction allocation. On May 1, 1991, Armco Steel Company, L.P. filed a response in opposition to the AG's motion.

Based on the motion and the responses, and being advised, the Commission hereby finds that all customer classes are adequately protected under the terms of the April 1, 1991 Order in the event the Commission ultimately reallocates Kentucky Power's proposed rate reduction. Contrary to the AG's argument, the Commission neither approved any of Kentucky Power's proposed rates nor made any finding on the fairness, justness, or reasonableness of the proposed rates. The Commission's April 1, 1991 Order explicitly stated that further proceedings would be necessary to determine the reasonableness of the proposed rates. The Commission has not yet conducted its investigation of Kentucky Power's proposed

revenue allocation or any other issue raised in Kentucky Power's rate application. No findings have been made on the revenue allocation issue or any other issue.

By allowing the proposed reduced rates to become effective subject to refund with interest, the Commission has acted in accordance with the extent of its statutory authority under KRS 278.180(2) to allow the ratepayers to receive the full benefits of the proposed rate reduction. The Commission has, by Order dated April 17, 1991, established a procedural schedule providing for discovery, intervenor testimony and a hearing. To the extent that the intervenors believe that Kentucky Power's proposed revenue reduction is discriminatory, the intervenors will have a full and fair opportunity to explore that issue during the course of this proceeding.

The Commission further finds that the relief requested by the AG and the Low Income Customers exceeds the Commission's statutory authority. Pursuant to KRS 278.190(2), the Commission can enter no Order with reference to the reasonableness of proposed rates prior to the completion of a hearing. The Commission can modify Kentucky Power's proposed revenue allocation, and in turn its proposed rates, only after holding a hearing and issuing written findings that the proposed allocation and rates are unreasonable. To grant the relief requested by the AG and Low Income Customers, the Commission would first have to find that Kentucky Power's proposed revenue allocation is unreasonable, and then find that some other allocation is reasonable. At this time, however, the

evidentiary record has not been fully developed nor has the requisite hearing been held.

In contrast to the statutory scheme set forth in KRS 278.190 for the Commission to modify a utility's proposed rates, no hearing is needed under KRS 278.180 for the Commission to allow, as the April 1, 1991 Order does, a utility's proposed reduced rates to go into effect upon less than 30 days' notice. The options available to the Commission in this case were limited to: 1) either suspend all Kentucky Power's proposed rates, thereby denying to some customer classes the benefits of the proposed \$3.3 million rate reduction; or 2) allow the proposed reduced rates to become effective, subject to refund with interest, on April 1, 1991, and suspend all other proposed rates. The Commission chose the later option in the firm belief that KRS 278.180(2) evidences a legislative intent that a reduction in rates should become effective without delay.

IT IS THEREFORE ORDERED that the AG's motion to modify or amend the Commission's April 1, 1991 Order be and it hereby is denied.

Done at Frankfort, Kentucky, this 6th day of May, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

ATTEST:


Executive Director


Commissioner